

### REMARKS

Reconsideration of the application is respectfully requested.

Claim rejection under 35 U.S.C. §101

Claims 19-23, 26, 29 were rejected under 35 U.S.C. §101. In order to advance the prosecution of the present application to early issuance, applicant is amending claims 19-23, 26, 29 to a Beauregard form. Applicant believes that claims 19-23, 26, 29 properly recite statutory subject matter and the Examiner is requested to withdraw the rejection under section 101.

Such amendment, however, does not constitute any type of admission that the Office Action's rejection is proper. Rather, it is believed that the originally recited "computer program product" claims are also patentable at least because they are directed to the practical utility of safeguarding data in a multi-cluster storage server. The Office Action reasons that "A 'computer program product' is non-statutory." However, applicant believes that Office Action has not proffered a proper test for determining subject matter eligibility. For instance, see the Federal Circuit's decisions in *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), a case involving a data processing system for administering mutual funds, *AT&T Corp. v. Excel Communications Inc.*, 172 F.3d 1352 (Fed. Cir. 1999), a case involving a method for billing long-distance telephone customers, and the recent PTO's Board of Patent Appeals and Interferences decision in *Ex parte Lundgren*, Appeal No. 2003-2088, in which the board held that a claimed method for compensating a manager could be eligible for patent protection even though the claims do not disclose a computer or apparatus of any kind. In those cases, the Federal Circuit and the PTO's Board alike focus on the practical utility aspect of the claims regardless of a computer or apparatus in determining eligibility under section 101. In the present application, claims 19-23, 26, 29 have the practical application of "safeguarding data in a multi-cluster storage server." Therefore, applicant believes that the original "computer program product" claims properly recited a statutory subject matter.

Claim rejection under 35 U.S.C. §112, second paragraph

The Office Action also rejected claims 1-13, 19-24, 26, 27, and 29 under 35 U.S.C. §112, second paragraph. Independent claims 1, 19, 24, 26, 27, and 29 are being amended to additionally recite "of the surviving cluster." It is believed that the amended claims and their dependent claims by virtue of their dependencies are in definite form, and applicant respectfully requests that the section 112, second paragraph rejection be withdrawn.

The rest of the claims (Claims 14-18) stand allowed. Accordingly, this communication is believed to be fully responsive to the Office Action and every effort has been made to place the application in condition for allowance. A favorable Office Action is hereby earnestly solicited. If a telephone interview would be of assistance in advancing prosecution of the subject application, the Examiner is requested to telephone the number provided below.

Respectfully submitted,



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